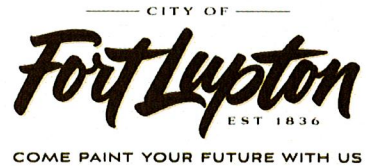


CITY OF FORT LUPTON CITY COUNCIL



Shannon Rhoda, Ward 1
Chris Ceretto, Ward 2
Mike Sanchez, Ward 3

Zo Stieber, Mayor

David Crespino, Ward 1
Tommy Holton, Ward 2
Bruce Fitzgerald, Ward 3

AM 2020-061

APPROVE RESOLUTION 2020RXXX OF THE FORT LUPTON CITY COUNCIL ESTABLISHING AN ECONOMIC INCENTIVE VIA A REBATE ON PERSONAL PROPERTY TAX FOR NEW AND EXPANDING COMPANIES.

I. **Agenda Date:** Council Meeting – March 3, 2018

II. **Attachments:**

- a. Resolution 2020Rxx
- b. Sample Agreement
- c. Sample Annual Refund Request Letter
- d. PP Tax Refund Fact
- e. PP Tax Refund Procedures

III. **Summary Statement:**

A personal property tax rebate available for new or expanding basic industries investing a minimum of \$1,000,000 which create primary jobs and import dollars into the community. A personal property tax rebate may be negotiated in an amount not greater than 50% of the amount of taxes levied by the City upon the taxable personal property located at or within such new or expanding business for a term not to exceed 10 years. The rebate is subject to revenue availability.

IV. **Submitted by:**


Chris Cross, City Administrator

V. **Reviewed by:**


Leann Perino
Finance Director

VI. **Approved for Presentation:**


Chris Cross
City Administrator

VII. **Attorney Review**

Approved

Pending Approval

VII. **Certification of Council Approval:**

City Clerk

Date

VIII. Detail of Issue/Request:

A personal property tax rebate available for new or expanding basic industries investing a minimum of \$1,000,000 which create primary jobs and import dollars into the community. A personal property tax rebate may be negotiated in an amount not greater than 50% of the amount of taxes levied by the City upon the taxable personal property located at or within such new or expanding business for a term not to exceed 10 years. The rebate is subject to revenue availability.

Each request will go before City Council to ensure that the rebate offer is understood and that the impact analysis is done for qualification purposes. This economic tool along with others in place will need to be evaluated by staff and council, typically annually, to ensure that it is still of benefit to all involved to help build a diverse and economic sustainable community. One of the cities identified pillars to success in the strategic plan.

IX. Legal/Political Considerations:

X. Alternatives/Options:

Accept the rebate proposal as is.
Don't Accept the proposal
Provide alterations to proposal for Acceptance.

XI. Financial Considerations:

This would represent a reduction of potential future revenues to the General Fund and the Recreation Center that receive property tax funds. The loss of revenue is offset by the economic advantage of being able to attract new business that are paying real property tax as well as other taxes and fees to the City.

XII. Staff Recommendation:

Approve the proposed resolution

RESOLUTION NO. 2020Rxxx

A RESOLUTION OF THE CITY COUNCIL OF FORT LUPTON ESTABLISHING AN ECONOMIC INCENTIVE VIA A REBATE ON BUSINESS PERSONAL PROPERTY TAX FOR NEW AND EXPANDING BUSINESS FACILITIES

WHEREAS, House Bill 12-1029 was enacted to stimulate the economy of the State of Colorado by allowing local governments to offer greater incentives to taxpayers who establish a new business facility or expand an existing facility; and,

WHEREAS, CRS 31-15-903 (1) (b) states that any municipality may negotiate for an incentive payment or credit with any taxpayer who establishes a new business facility, as defined in section 39-30-105 (7) (e), C.R.S., in the municipality, and;

WHEREAS, in no instance shall any negotiations result in an annual incentive payment or credit that is greater than the amount of taxes levied by the municipality upon the taxable personal property located at or within the new business facility and used in connection with the operation of the new business facility of the current property tax year, and;

WHEREAS, the term of the agreement made pursuant to the provisions of this section shall not exceed four years; except that the term of any agreement made or renewed on or after June 3, 2002, may extend to as many as ten years, including the term of any original agreement being renewed, and;

WHEREAS, any municipality may negotiate for an incentive payment or credit with any taxpayer who expands a facility, as defined in section 39-30-105 (7) (c), C.R.S., the expansion of which constitutes a new business facility, as defined in section 39-30-105 (7) (e), C.R.S., and that is located in the municipality

WHEREAS, in no instance shall any negotiation result in an annual incentive payment or credit that is greater than fifty percent of the amount of the taxes levied by the municipality upon the taxable personal property directly attributable to the expansion, located at or within the expanded facility, and used in connection with the operation of the expanded facility for the current property tax year, and;

WHEREAS, The term of any agreement made pursuant to the provisions of this section shall not exceed four years; except that the terms of any agreement made or renewed on or after June 3, 2002, may extend to as many as ten years, including the term of any original agreement being renewed

NOW THEREFORE BE IT RESOLVED that the Fort Lupton City Council, hereby declares that the intended purpose of the potential tax expenditures included in this act is to stimulate the economy of the state of Colorado by allowing local governments to offer greater incentives to taxpayers who establish a new business facility or expand an existing facility.

APPROVED AND PASSED BY A MAJORITY VOTE OF THOSE ELECTED TO THE CITY COUNCIL OF THE CITY OF FORT LUPTON, COLORADO THIS 3rd DAY OF MARCH 2020.

City of Fort Lupton, Colorado

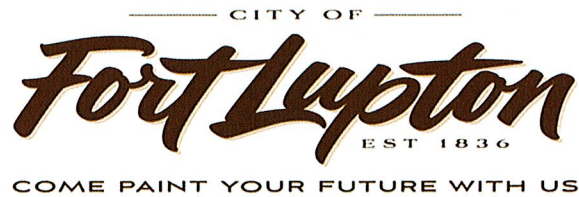
Zo Stieber, Mayor

Attest:

Maricela Peña, City Clerk

Approved as to form:

Andy Ausmus, City Attorney



AGREEMENT PURSUANT TO C.R.S. § 31-15-903

THIS AGREEMENT is made and entered into this ____ day of _____, 2020, by and between the City of Fort Lupton, a municipal corporation, whose address is 130 South McKinley Ave. Fort Lupton, CO 80621, hereinafter referred to as, "Taxing Authority," and _____ (company name) _____ whose address is _____, hereinafter referred to as, "Taxpayer."

WITNESSETH:

WHEREAS, Taxing Authority desires to promote economic development within Fort Lupton, Colorado, for the purposes of generating employment opportunities for residents of Weld County, thereby stimulating the economic well-being of Fort Lupton and Weld County's citizens, and

WHEREAS, C.R.S. § 31-15-903 provides that the Taxing Authority may negotiate incentive payments to taxpayers who establish new business facilities or who expand existing business facilities, and

WHEREAS, Taxpayer represents that it has invested or intends to invest in qualifying personal property and wishes to receive the incentive payment benefits available pursuant to C.R.S. § 31-15-903, and

WHEREAS, Taxpayer has been determined to be currently eligible to receive the incentive payment benefits available pursuant to C.R.S. § 31-15-903, and pursuant to the City Council policy concerning incentive payments passed by Resolution on (insert date) ("Resolution of the Taxing Authority").

NOW, THEREFORE, the parties hereto hereby agree to the following:

1. Subject to annual appropriation by Taxing Authority, fifty-percent (50%) of the amount of personal property taxes paid by the Taxpayer for personal property located at Taxpayer's Facilities at _____ ("the Facility"), placed into service in Weld County in:
 - a. Between 2017-2022 and appearing on the personal property declaration schedule submitted by the Taxpayer to the Weld County Assessor, which personal property has not appeared on previous schedules, shall be paid to the Taxpayer by the Taxing Authority for the ten (10) tax years (hereinafter referred to as, "10-Year Term"). Individual pieces of personal property placed in service between the years of 2017-2022 shall only receive the fifty-percent (50%) of the amount of personal property

taxes paid by the Taxpayer for personal property for the 10-Year Term. For example, equipment placed in service in 2017 will receive the fifty-percent (50%) of the amount of personal property taxes paid by the Taxpayer for personal property for the 10-Year Term beginning in 2017 and ending in 2027, for equipment placed in service in 2018 the 10-Year Term beginning in 2018 and ending in 2028, for equipment placed in service in 2019 the 10-Year Term beginning in 2019 and ending in 2029, etc.

All tax incentive payments made pursuant to this Agreement shall hereinafter be referred to as, "Tax Incentive Payments." Taxpayer shall submit to the Weld County Assessor an affidavit certifying the aggregate cost and year of acquisition of Taxpayer's personal property that, to Taxpayer's best knowledge, information and belief, qualifies for incentive payments under C.R.S. § 31-15-903, for the 10-Year Term. The amounts so certified shall be subject to review by the Weld County Assessor.

2. Tax Incentive Payments shall be made by Taxing Authority only upon appropriation, and only if:
 - a. All taxes and assessments levied and assessed on Taxpayer by Taxing Authority for Facilities are current, and
 - b. In each year of this Agreement, Taxpayer remains eligible to receive the Tax Incentive Payments under criteria established in C.R.S. § 31-15-903 and the Resolution of the Taxing Authority, and
 - c. Tax Incentive Payments are not calculated as being part of the Weld County Home Rule five percent (5%) property tax limitation or State of Colorado property tax limitation.
3. Any appropriated Tax Incentive Payments shall be made to Taxpayer by Taxing Authority within 90 days of receipt of full payment by the Taxpayer of all personal property taxes due and receipt of an affidavit from the Taxpayer stating that the Taxpayer remains eligible for such payment pursuant to C.R.S. § 31-15-903 and the Resolution of Taxing Authority.
4. The Tax Incentive Payments shall not be made by Taxing Authority if an amendment to the Colorado Constitution limiting property taxes is subsequently passed after the date of this Agreement, or if a court of competent jurisdiction declares any portion of this Agreement, C.R.S. § 31-15-903 (as may be amended), or the Resolution of the Taxing Authority, to be invalid or unconstitutional.
5. Any Tax Incentive Payments made under this Agreement that are determined not to be legal under the laws of the State of Colorado or are determined to be part of the Weld County Home Rule five percent (5%) property tax limitation or State of Colorado property tax limitation, shall be repaid to Weld County.

6. TAX INCENTIVE PAYMENTS TO TAXPAYER SHALL ONLY BE MADE TO THE EXTENT REVENUES ARE AVAILABLE AND APPROPRIATED IN EACH OF THE TEN (10) TAX YEARS OF THE 10-YEAR TERM.
7. This Agreement is not assignable.
8. Acceptance of any Tax Incentive Payment by Taxpayer constitutes agreement by both parties to fund the Tax Incentive Payment for the tax year involved.
9. Claim for a Tax Incentive Payment must be submitted to Taxing Authority by Taxpayer by October 1st of each year or Taxpayer waives the right to receive payment for that year.
10. Taxpayer agrees that it shall attempt to use reasonable efforts to ensure that a minimum of fifty percent (50%) of its workforce employed at the Facilities are City of Fort Lupton residents during the terms of this Agreement.
11. All notices required or permitted under this Agreement shall be given in writing and shall be effective when delivered in the case of hand delivery or five days after mailing, when mailed, provided that mailed notices shall be sent by certified mail, return receipt requested. Notices shall be sent to the following addressees at the following addresses or facsimile numbers or to such other addressees, addresses or facsimile numbers as a party may designate from time to time by notice given pursuant to this paragraph:

If to the County: City of Fort Lupton
 Attn: Finance Director
 130 S. McKinley Ave.
 Fort Lupton, CO 80621

If to Taxpayer: Company contact
 Company name
 Address
 City, state, zip
 (Contact email)

12. Each of the parties will execute and deliver such other instruments and documents and will take all such other actions as the other party may reasonably request and as may reasonably be required in order to effectuate the purpose of this Agreement and to carry out its terms.
13. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

14. This Agreement constitutes the entire agreement between the parties and supersedes and replaces all prior and contemporaneous agreements, representations, both written and oral, between the parties with respect to the subject matter of this Agreement. No variation or modification of this Agreement, and the waiver of the Agreement's provisions or conditions, shall be binding unless made in writing and signed by duly authorized officers of the County and Taxpayer. As permitted hereunder, this Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns. This Agreement shall be governed by and construed according to the laws of the state of Colorado.
15. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.

The above and foregoing Agreement was hereby approved on the ____ day of _____, 2020.

ATTEST:

CITY OF FORT LUPTON

BY: _____
Maricela Peña, City Clerk

Zo Stieber, Mayor

APPROVED AS TO FORM:

Andy Ausmus, City Attorney

TAXPAYER: _____
(Company name)

Signature: _____

Name: _____

Title: _____

SAMPLE PERSONAL PROPERTY TAX REFUND REQUEST LETTER

Date

City of Fort Lupton
Director of Finance & Administration
130 South McKinley Ave.
Fort Lupton, CO 80621

Re: Fort Lupton Personal Property Tax Refund Incentive Agreement (tax notice account #)

To Whom It Concerns,

Per agreement number (insert City incentive agreement number), enclosed please find our affidavit certifying the aggregate cost and year of acquisition of eligible personal property for our facility located at (insert address) and appearing on the personal property declaration schedule submitted to the Weld County Assessor. This personal property has not appeared on previous schedules and the equipment is currently in use at this facility.

Enclosed you will also find verification that all current personal property tax/assessments have been paid in full. (Company name) currently employs _____ full-time and _____ part-time and _____ (%____) of these employees currently reside in Weld County. Documentation can be provided as warranted.

Per the agreement, xx% of the City of Fort Lupton government portion of the personal property taxes paid on this property shall be reimbursed to (insert company name). Therefore, we anticipate a refund of \$_____ per the attached personal property tax notice for (year) taxes due in (year).

Should you have any questions or need additional information please contact me at (phone number).
Thanks for your assistance.

Sincerely,

Company Official Name
Title

Attachments

CITY OF FORT LUPTON

PERSONAL PROPERTY TAX REFUND INCENTIVE

SUMMARY

Colorado has passed legislation that enables counties and municipalities, on a case-by-case basis, to negotiate a refund of up to 100% of the governing jurisdiction's levy on new taxable personal property (equipment) used in connection with the operation of a qualifying new/expanding primary sector business facility. Colorado limits this incentive to ten years.

On a case-by-case basis, Weld County and municipalities throughout the County, will typically consider refunding up to 50% of new personal property tax to new/expanding primary sector businesses that meet state/local eligibility requirements.

COLORADO & WELD COUNTY TAXPAYER ELIGIBILITY REQUIREMENTS

- 1). The taxpayer must qualify as a "New Business Facility (NBF)" defined as: a new or expanded facility that is employed by the taxpayer in the operation of a revenue producing enterprise. An existing company may qualify as a NBF (as referenced by C.R.S. 31-15-903) by undertaking an expansion that exceeds \$1 million; or if less, 100% of its investment in the original facility prior to expansion. A replacement facility may qualify if the taxpayer's investment exceeds \$3 million; or if less, 300% of the investment in the old facility.
- 2). The eligible business shall not include any corporate reorganization, sale of an existing business, or resumption of business activities unless new investment is created.
- 3.) The businesses taxable personal property must be located at/within such "NBF" or directly attributable to the expansion of an existing business facility, and used in connection with such facility for the current property tax year.
- 4). An eligible business shall derive at least 50% of its principal source of gross annual income from the sale of products/services consumed outside of Weld County either directly or indirectly, and shall not derive more than 25% of gross annual income from direct retail sales or other internally directed sales. The program intent is to assist primary sector firms engaged in manufacturing, processing, research & development, etc. and provision of externally directed services.
- 5). An eligible business shall make a minimum new personal property investment of at least \$1 million in the eligible NBF.
- 6). The City of Fort Lupton maximum refund award is \$20,000/new job created/retained and at least 50% of the eligible company's workforce must be Weld County residents. The intent of these guidelines is to assist new/expanding primary sector businesses that are creating jobs for Weld County residents.

APPLICATION PROCEDURES

Contact Upstate Colorado Economic Development for additional program information, to determine eligibility and for assistance in requesting this incentive. In determining tax refund awards, total project impacts including investment, job creation, wage rates, etc. will all be taken into consideration by the governing jurisdictions.



Supporting Job Opportunities in Greeley & Weld County Communities

970.356.4565 phone • 970.352.2436 fax • 822 Seventh Street, Suite 550, Greeley, CO 80631
www.upstatecolorado.org

CITY OF FORT LUPTON

PERSONAL PROPERTY TAX INCENTIVE REFUND PROCEDURES

PROGRAM HIGHLIGHTS

Pursuant to C.R.S. §31-15-903: to be eligible for the personal property tax refund program the taxpayer must: 1) qualify as a "New Business Facility (NBF)"; 2) make a new equipment investment of at least \$1 million in Year 1; 3) be approved by the Fort Lupton City Council; 4) document that all personal property tax/assessments levied on the company are 100% paid/current. The maximum City refund is \$20,000/new job created/retained and at least 50% of company employees must be Weld residents (see Personal Property Tax Refund Program Incentive overview for additional eligibility requirements).

Please Note: Awarded refunds are 50% of City's portion of tax paid on new personal property (equipment) first put into operation in the eligible NBF in Year 1; for a total of up to ten years. Additional equipment investments made in years 2-10 are not part of the original agreement. To receive tax refunds for additional equipment investments, the company would need to again meet program guidelines and receive approval from the Fort Lupton City Council. This incentive is not retroactive.

REFUND INSTRUCTIONS

1. A written request for this incentive must be made to City of Fort Lupton prior to the year the property is first put into operation in Year 1 at the eligible NBF. This request should summarize the project impacts including real and personal property investment, job creation/retention, wage rates, Weld employment, etc. Contact Upstate Colorado Economic Development for assistance with this request.
2. Companies awarded a personal property tax refund will enter into an agreement with City of Fort Lupton (see attached sample City agreement).
3. All personal property tax/assessments levied on the taxpayer for the eligible facility must first be 100% paid/current prior to applying for a refund.
4. Each year of the 10 year agreement the company must provide a letter to the City of Fort Lupton Finance Department (see City agreement) requesting the refund and stating their continued eligibility by providing the following information (see attached sample letter):
 - a. Copy of the current Weld Personal Property Tax Notice and verification that all personal property tax/assessments are 100% paid/current;
 - b. Certify the cost of the eligible personal property by providing an itemized list that includes: a brief description of each piece of eligible equipment, the year acquired the original cost and confirmation that the equipment is being utilized at the facility.
 - c. Company's current Weld employment and percentage of employees that live in Weld County.
 - d. Refund request must be made by October 1st of each year.
5. Upon qualification by City of Fort Lupton the refund will generally be forwarded within 90 days.



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